

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

In re: Donald L. Carcieri

Complaint No. 2006-9

ORDER

This matter having been heard before the Rhode Island Ethics Commission on March 6, 2007, pursuant to Commission Regulation 1011, and the Commission having considered the Complaint herein, the arguments of counsel, the findings of fact, mitigating factors and the proposed Information Resolution and Settlement, which is incorporated by reference herein, it is hereby


ORDERED, ADJUDGED AND DECREED

THAT, the Commission approves the Informal Resolution and Settlement; and

THAT, the Commission incorporates by reference herein its findings of fact and conclusions of law as those set forth in the Informal Resolution and Settlement; and

THAT, the Respondent is ordered to pay a civil penalty in the amount of One Thousand (\$1000.00) Dollars.

Entered as an Order of this Commission,


Barbara Binder
Vice Chairperson

Dated: March 6, 2007

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**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

**In re: Donald L. Carcieri,
Respondent**

Complaint No. 2006-9

INFORMAL RESOLUTION AND SETTLEMENT

The Respondent, Donald L. Carcieri, and the Rhode Island Ethics Commission hereby agree to a resolution of the above-referenced matter as follows:

I. FINDINGS OF FACT AND ADMISSIONS

A. Solicitation of State Employees, as alleged in the Original Complaint

1. The Respondent was first elected to the Office of Governor of the State of Rhode Island in November of 2002 and was re-elected in November of 2006.
2. In his capacity as the Governor of the State of Rhode Island, the Respondent is empowered to appoint the following: a director of business regulation; a director of labor and training; a director of environmental management; a director for children, youth and families; a director of elderly affairs; clerical assistants and other employees as he deems necessary. See R.I. Gen. Laws § § 42-6-3 and 42-7-2. The aforementioned directors and employees serve at the pleasure of the Governor.
3. Kenneth K. McKay, IV served as Campaign Manager for the 2006 Carcieri for Governor Campaign (hereinafter the "Campaign").
4. In April of 2006, the Campaign contracted with Darcie Johnston of Johnston Consulting, a political strategy and fundraising firm located in Vermont.
5. Johnston Consulting, on behalf of the Campaign, initiated a direct mail fundraising campaign to solicit campaign contributions from potential donors in the State of Rhode Island.

6. Johnston Consulting contracted with SCM Associates to organize the direct mail campaign.

7. SCM Associates is located in New Hampshire and is a direct-response firm that offers direct mail and telemarketing services for fundraising, political and grassroots lobbying purposes.

8. Ms. Johnston served as a liaison between SCM Associates and the Campaign.

9. From May 31, 2006 to October of 2006, at least five (5) separate direct mailings were sent to residents of the State of Rhode Island soliciting contributions to the Campaign.

10. In each direct mailing, approximately 8,000 to 12,000 letters were mailed to residents of the State of Rhode Island.

11. The solicitation letter, authored by Ms. Johnston and reviewed by Mr. McKay, was signed by the Respondent.

12. The names and addresses of the residents, as mentioned in paragraph 9, were taken from mailing lists which were rented by the Campaign and provided by SCM Associates.

13. The rented mailing lists were compiled from subscriptions to various political magazines and news publications.

14. Although the Respondent had knowledge of the direct mail campaign, Ms. Johnston and Mr. McKay were responsible for the direct supervision of said campaign. The Respondent did not review nor was he otherwise aware that the names and addresses on the rented mailing lists included any employees of the State of Rhode Island.

15. As a result of the direct mail campaign, seven (7) employees of the State of Rhode Island received solicitation letters.

16. The seven (7) employees who were mailed the solicitation letters were individuals employed by the following departments in the following positions: Department of Administration (Human Resource Analyst); Department of Transportation (Supervising Electrical Inspector); Office of the Lieutenant Governor (Secretary/Scheduler and Director of Administration); Department of Environmental Management (Environmental Scientist); Rhode Island Senate (Secretary); Office of the General Treasurer (Deputy Treasurer of Finance).

17. The investigation established that the seven (7) employees from each of the various departments, as mentioned in paragraph 16, are not "subordinates" of the Respondent, as that term is defined in Commission Regulation 36-14-5011(c).

B. Amendment of Complaint

1. During the investigation, it was discovered that six (6) additional state employees, who *are* subordinates of the Respondent, were solicited by the Campaign.

2. The individuals are state employees holding the following positions: Director of the Department of Business Regulation; Director of the Department of Environmental Management; Director of the Department of Elderly Affairs; Director of the Department of Children, Youth and Families; Director of the Department of Labor and Training; and an Associate Executive Assistant in the Office of the Governor.

3. The aforementioned positions are under the direct control and supervision of the Respondent, in his capacity as Governor of the State of Rhode Island.

4. The Prosecution requests that the Commission amend the original Complaint to include an additional allegation that, by the Campaign's solicitation of the individuals, as mentioned in paragraph B(2), the Respondent violated Commission Regulation 36-14-5011(b).

II. CONCLUSIONS OF LAW AND SETTLEMENT

A. Original Complaint

1. The Commission finds that the Respondent, Governor of the State of Rhode Island, is a state elected official subject to the Code of Ethics pursuant to R.I. Gen. Laws § 36-14-4(1).

2. The state employees, as mentioned in paragraph 17, are not “subordinates” of the Respondent, as that term is defined in Commission Regulation 36-14-5011(c).

3. The Commission finds that the Respondent did not violate Commission Regulation 36-14-5011(b) by his Campaign’s solicitation of the state employees, as mentioned in paragraph 17.

B. Amended Complaint

1. The Commission hereby amends Complaint No. 2006-9 to include an additional allegation that, by the Campaign’s solicitation of the individuals, as mentioned in paragraph B(2) above, the Respondent violated Commission Regulation 36-14-5011(b).

2. The Commission finds that said individuals are state employees under the direct control and supervision of the Respondent, in his capacity as Governor of the State of Rhode Island.

3. The Commission finds that, because of the Campaign’s solicitation of the Director of the Department of Business Regulation; Director of the Department of Environmental Management; Director of the Department of Elderly Affairs; Director of the Department of Children, Youth and Families; Director of the Department of Labor and Training; and an Associate Executive Assistant in the Office of the Governor, all state employees under the

Respondent's direct control and supervision, sufficient evidence exists whereby the Commission could find, after a hearing, that the Respondent violated Commission Regulation 5011(b).

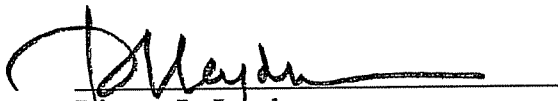
C. Mitigating Factors

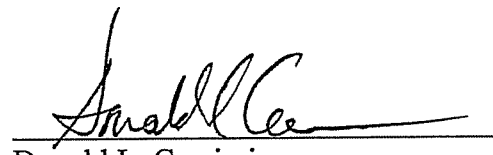
In mitigation of the conduct detailed above, the Respondent submits the following:

1. Respondent did not intentionally violate the Code of Ethics. Although he was certainly aware of the direct mail campaign, he did not directly supervise the direct mail campaign; he did not review any of the names and addresses on the rented mailing lists; and he had no knowledge that the Campaign would be sending any solicitation letter to any state employees.
2. That immediately upon realizing that the Campaign's solicitation letter had been sent to some state employees, the Respondent immediately ordered that all future direct mailings contain the following disclaimer, "If you are a state employee, you received this mailing inadvertently, please disregard. Thank you!"
3. Respondent has fully cooperated with Commission staff in the investigation and resolution of this matter, and has ordered his campaign personnel to fully cooperate as well.
4. Without admitting to having committed any willful or knowing violation of any applicable Ethics Regulation or law, and solely for the purpose of informally resolving and settling the Complaint in this matter, the Respondent agrees to pay a civil penalty of either \$500.00 or \$1,500.00 – or any amount in between such figures – as the Commission, in its discretion, shall determine to impose after hearing argument from the parties' counsel on this issue.


D. Settlement

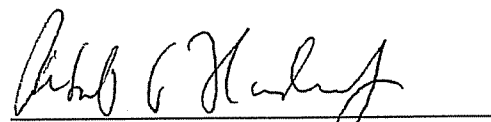
The parties agree that, pursuant to the above Findings of Fact and Conclusions of Law, the Prosecution will recommend, pursuant to Commission Regulation 1011, the imposition of a civil penalty of not more than \$1,500.00 and that the Respondent will recommend the imposition of a civil penalty of not less than \$500.00. The above terms represent the full and complete Informal Resolution and Settlement for Complaint No. 2006-9.


Dianne L. Leyden
Commission Prosecutor
Dated: 3/6/07


Donald L. Carcieri
Respondent 3/5/07
Dated:

Subscribed to and sworn before me
this 5 day of March, 2007.


Notary public
My Commission Expires: 8/24/09


Robert G. Flanders, Jr., Esq.
Respondent's Counsel